

TAXREP 23/00

Code of Practice on written consultations

Memorandum submitted in July 2000 to the Cabinet Office by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to a consultation paper issued in April 2000.

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Introduction

1. We welcome the opportunity to comment on the Code of Practice on written consultations (the Code) made available by the Cabinet Office.
2. The Tax Faculty has 9,200 members who are all chartered accountants involved in tax, either as practitioners or in industry. We also are the voice on tax matters for the 116,000 chartered accountants who belong to the Institute of Chartered Accountants in England and Wales (ICAEW). As such we respond to all major consultations undertaken formally by the revenue authorities and many of the informal consultations. Consequently, we have had considerable experience of dealing with the consultation process.

General comments

3. We are very pleased to see that the Government is taking the issue of consultations seriously by issuing this draft Code. We believe it is essential to the democratic process for there to be an effective method of consulting with those who will be affected by new rules or legislation. Not only is it important that consultation takes place on such issues but it should be seen to be taking place, to give the public confidence in the process.
4. We also believe that it is not only essential to introduce such a Code but also to ensure that it is adhered to. The revenue authorities, which are primarily the Inland Revenue and Customs and Excise, published their own Code of Practice on Consultation in January 1998. We believe this Code has been insufficiently adhered to (examples are included in the detailed analysis of the Code below) and has thus brought the revenue authorities Code of Practice into disrepute. It would be a wasted opportunity if the Cabinet Office proposals fell by the same route.
5. We have made detailed comments below on the draft Code but in brief our key suggestions for any such Code are as follows:
 - a) There should be an obligation to consult on all key policy decisions. Exceptions should be rare, clearly defined, explained and subject to independent scrutiny.
 - b) Consultations should be administered centrally in such a way that it is possible for affected parties to monitor their progress (e.g. by using website pages).
 - c) It is essential that sufficient time is given to seeking comments on consultations. We believe a reasonable time is 3 months. If a shorter time is necessary, this necessity should be justified.
 - d) Consultations should be properly publicised. How this is done, of course, depends on the nature of the consultation. However, the use of relevant websites, hard copy press releases and the media in general are useful tools.
 - e) Feedback from consultations is essential. It is necessary in order to encourage participation in future consultations for those who have taken the time and effort to make representations, to see that their views were properly considered. A summary of results and a brief analysis should be published as to why the consultation has led to a certain decision.

Detailed analysis of the draft Code

6. The following considers each of the items in the draft Code.

Point One of the Code

7. *Consultation should be built into the planning process for a policy or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.*
8. We agree that consultation is a vital ingredient in the planning process. It does need to be considered at the outset. We believe there should be an obligation to consult on all major proposals. This can have numerous advantages. By seeking the views, especially the views of those most likely to be affected by any proposal, it is possible to shed new light on an issue and highlight any problems. It can rectify limitations not originally spotted.
9. Our experience is that once a proposal has been put forward without a pre-built-in consultation process, it can be very difficult to modify or change that proposal in any significant way. For example, we believe the recent debacle surrounding the proposals impacting on the provision of services by intermediaries (IR35) could have been significantly reduced if full and proper consultation had been built into the planning process. Another example of where a lack of proper consultation has led to practical problems is in the case of taper relief for the purposes of capital gains tax.
10. We believe any deviation from an obligation to consult, should be explained and be subject to independent scrutiny, for example by a Parliamentary committee. In the development of new taxation rules and proposals, we believe there are very few instances when consultation should not take place.

Point Two of the Code

11. *It should be clear who is being consulted, about what questions, in what timescale and for what purpose.*
12. We agree that this is a valuable point to add to any Code. Consultations are often not sufficiently signposted and therefore might not result in reaching the right audience. Again one can look at the personal service company provisions tucked away in the Budget Inland Revenue press releases, that were not widely publicised until various Internet sites and representative bodies brought them to the attention of the public in general.
13. Targeting consultations is a difficult process and can be costly. However, we believe that the consultation process is so important that the Government should err on the side of trying to encourage as many people as possible to take part in consultations rather than looking to limit the range too restrictively.
14. Highlighting the purpose of the consultation is vital. Sadly we have noticed in recent years that many Revenue and Customs press releases, announcing consultations are so heavy with 'spin' that it is not always clear what the purpose of the consultation is and what the alternative views might be. A series of questions and a clear statement of purpose or, even better, a number of possibilities is far more helpful.

15. Questions can be a useful method within a consultation but they should not be too prescriptive. There should be an opportunity for a range of views and opinions to be expressed which may fall outside of the questions included in a consultation.
16. The use of Regulatory Impact Assessments at the consultation stage are not always of assistance as they include a number of pre-judgements that may be viewed as pre-empting the views of respondents. For the consultation process to work effectively it is important that an open-mind is kept as to a final decision on any policy issue and that consideration is allowed for the variety of burdens on business that may be revealed in that consultation process. It is important that the consultation allows for the solicitation of alternative views to those of the people who drafted the consultation papers.

Point Three of the Code

17. *A consultation document should be as simple and concise as possible. It should always summarise in no more than two pages the questions on which views are sought. It should make it as easy as possible for readers to respond, or make contact.*
18. We agree that it is important to keep consultations as simple and concise as possible. In the field of tax this is not always easy, particularly in the case of Technical Notes. We therefore believe that it would be worthwhile to have a clear summary of a document (like an Executive Summary) that complied with the above point whilst allowing the possibility of more detailed extra information to be added as need be. Therefore, whilst consultation documents should be simple they should not be simplistic and should make clear all the relevant issues for consideration.
19. We also believe that it is always necessary to include competing arguments in the consultation document rather than the less emphatic ‘might outline competing documents’ used in the explanation of Criterion 3 in the draft Code.

Point Four of the Code

20. *Documents should be made widely available, using electronic means as far as possible (though not to the exclusion of others), and effectively drawn to the attention of all interested groups.*
21. We agree that it is important to make consultations available to a wide audience. As the draft appears to consider, not everyone has access to the Internet and it is important that no one is disadvantaged by this factor.
22. We also think that it is essential for all relevant information to be made available to the public to enable a full and frank discussion of the issues.
23. It is important to be alive to the fact that some people’s views on an issue will be more informed than others due to experience etc. Therefore, targeting a consultation to ensure that the right audience is made aware of it, is essential to allow for a worthwhile debate.

Point Five of the Code

24. *Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks is preferable, and eight weeks should be regarded as a general minimum.*

25. We believe this is a particular important part of the Code. In recent years we have seen a considerable reduction in the time made available for consultations which means that a response can become rushed or deadlines can be missed.
26. As an example, we list below some recent Revenue consultations with the time given for comments. All of these fail the minimum time period suggested in the Code.

<i>Consultation consultation time</i>	<i>Date made available</i>	<i>Date given for response</i>	<i>Length of</i>
Reform of intellectual property	23 June 2000	11 August 2000	7 weeks
Disposal of substantial share-holdings	23 June 2000	11 August 2000	7 weeks
Double Taxation Relief	21 March 2000	18 April 2000	4 weeks

27. As a representative body we need to canvass our members, who voluntarily give up fee-earning office time to assist in responding to consultations. Tight timeframes make it difficult to allow the right people to be able to add their expertise to the consultation process.
28. Obviously, if required, we would rather be consulted under a short timeframe than not consulted at all. However, we believe in almost all cases it should be possible to provide at least 3 months for responses to be submitted.
29. We note in the explanation to the Code that ‘inadequate time for responses is the greatest cause of annoyance to people consulted by Government’. Our experience is that this is matched, if not excelled by the inadequate feedback made available after consultation has taken place, a point which is covered in point 6 of the Code.
30. We note the use of ‘fairness’ in the explanation to the Code regarding extensions to deadlines. In our view, whoever is undertaking the consultation should be willing to listen to any views right up until the time that a decision has to be taken.

Point Six of the Code

31. *Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.*
32. We agree that it is very important for there to be proper feedback relating to any consultation. This should show the number of people who responded and provide details of why certain decisions have been taken. Most of the representations we are involved in have little if any feedback and no analysis made publicly available. This is disheartening for those who have given up their time to participate.

33. We are also concerned about many recent consultations (e.g. IR35) where the consultation process has been used as a means of selling a strategy that has already been decided upon.
34. A particularly disturbing example of the use of consultations incurred in the Customs and Excise proposals for a 'Mini-General Anti-Avoidance Rule'. On the day after the consultation deadline, the whole process was shelved without considering the issues that had been raised. Customs had decided to follow an alternative route but without bothering to inform prospective respondents to the original consultation.
35. We strongly agree that counting votes is not a suitable way of determining the result of a consultation. It is important to give a sensible weighting to all respondents. For example, a representative body will be giving the view of a sizeable number of people as opposed to the view of one individual who may have a singular opinion. Our experience in recent years has been that the revenue authorities have 'vote counted' and used this as a means of justifying their decisions.
36. We also believe it is important that an open-minded view is taken on all consultations. For example, we were alarmed to see that the Paymaster General, in the Finance Bill Standing Committee debates on double taxation relief, say:
- 'I take those who are involved in running those (relevant tax) sections in companies more seriously than accountancy firms that want to make representations so that they can advise their clients accordingly.'
37. We would hope that the views of accountancy firms who may represent a substantial number of small and medium sized businesses with genuine practical issues, would not be treated in a different manner to the views of 'big' business.

Point Seven of the Code

38. *Departments should monitor and evaluate consultations*
39. We believe that all consultations should be carefully tracked so that it is possible to see what stage each consultation has reached. The monitoring of this would best be carried out by an independent body such as the Cabinet Office. Any evaluation procedure would need to be shown to have a value and provide useful information.
40. We believe it is very important that the reasons for decisions are made public. If consultations continually fail to alter the original proposals it gives the impression of being a 'sham' unless those decisions are fully explained.

Conclusion

41. We are happy to discuss any of the points raised above in more detail if that will be of assistance.